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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1469

AMOCO PRODUCTION COMPANY,
Petitioner,

versus

MIKE HOOKS, INC., ET AL,
Respondent.

AUSTRAL OIL COMPANY,
Petitioner,

versus

MIKE HOOKS, INC., ET AL,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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TABLE OF CONTENTS

Page

OPINIONS BELOW 2

JURISDICTION 2

QUESTION PRESENTED FOR REVIEW 3

STATEMENT OF THE CASE 3

ARGUMENT 5

CERTIFICATE 8

APPENDIX A — Order, No. 74-1952, dated March 7, 1975 ..... 1a

APPENDIX B — Order, No. 74-1868, dated March 7, 1975 ..... 2a

APPENDIX C — Order, Nos. 74-1952 and No. 74-1868, dated April 9th, 1975 ..... 3a

APPENDIX D — Opinion of the District Court, CA No. 18,870 ..... 4a

APPENDIX E — Opinion of the District Court, CA No. 19,068 ..... 9a

TABLE OF AUTHORITIES

Cases:

Aktieselskabet Cuzco v. The Sucarseco et al, 294 U.S. 394, 55 S. Ct. 467 (1935) 6

Carbone v. Ursich, The Del Rio, 209 F. 2d 178 (1953) 5

Robins Dry Dock & Repair Co. v. Flint, 275 U.S. 303, 48 S. Ct. 134 (1927) 3,5,6

Union Oil Co. v. Oppen, 501 F. 2d 558 (1974) 5-6

IN THE
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AMOCO PRODUCTION COMPANY,
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MIKE HOOKS, INC., ET AL,
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AUSTRAL OIL COMPANY,
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versus

MIKE HOOKS, INC., ET AL,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

The petition of Amoco Production Company and Austral Oil Company that a writ of certiorari issue to review the judgment of the United States Court of

Appeals for the Fifth Circuit entered in this proceeding on March 7, 1975.

I.

OPINIONS BELOW

The unreported opinions of the Court of Appeals are reproduced in Appendices A and B to this petition. The order of the Court of Appeals denying Petitioners' application for rehearing is reproduced in Appendix C to this petition. The opinion of the District Court granting a motion for summary judgment is reproduced in Appendices D and E to this petition.

II.

JURISDICTION

(1) The judgment of the Court of Appeals was entered on March 7, 1975.

(2) On March 25, 1975, the Fifth Circuit Court of Appeals granted Applicants' motion for an extension of time to file their petition for rehearing until March 31, 1975. Petitioners' application for rehearing was denied on April 9, 1975.

(3) The jurisdiction of this court is invoked under the provisions of 28 U.S.C.A. 1254(1).

III.

QUESTION PRESENTED FOR REVIEW

The sole question presented by this petition is whether the decision of this court in *Robins Dry Dock & Repair Co.* v. *Flint*, 275 U.S. 303, 48 S. Ct. 134 (1927), produced a rule intended to be applied in all cases to protect a tort feasor from the full responsibility of his negligence merely because of a contractual relationship between the injured plaintiff and a third party whose property is damaged by the tort feasor's negligence.

IV.

STATEMENT OF THE CASE

On November 19, 1972, and for some time prior thereto, Petitioner, Amoco Production Company, owned two natural gas processing plants which were commonly identified as the South Jennings Gas Processing Plant and the South Pecan Lake Gas Processing Plant. In addition, Amoco Production Company and Austral Oil Company, jointly, owned the South Manchester Gas Processing Plant and the South Thornwell Gas Processing Plant.

Natural gas produced from wells owned by Amoco and Austral was processed at these four plants in order to remove valuable liquefiable hydrocarbons (referred to as "raw mix") prior to delivering the gas to market. Additionally, natural gas produced from wells belonging to other parties was processed at

these plants for which Amoco and Austral were paid a processing fee.

The "raw mix" extracted from the natural gas processed at the four plants was delivered to Cities Service Oil Company at the tailgate of each plant and transported to Cities Service's refinery by means of a six inch liquefied petroleum gas pipeline. In accordance with the terms of four separate fractionation agreements, Cities Service processed the "raw mix" at its refinery in Lake Charles, Louisiana, and returned to Amoco and Austral the products fractionated or refined therefrom. Cities Service was paid a fee for transporting and fractionating the "raw mix".

On or about November 19, 1972, the dredge, The Galveston, owned and operated by Mike Hooks, Inc., was engaged in dredging the Calcasieu River and Pass Ship Channel in accordance with a contract between that company and the Department of Army, Corps of Engineers. While thus engaged in dredging operations, the dredge cut the six inch liquefied petroleum pipeline which was used to transport the "raw mix" from Amoco and Austral's processing plants to the refinery. Amoco and Austral allege that this pipeline damage was caused by the negligence of Mike Hooks, Inc. and its employees, and that their loss was the direct result of this negligence.

Immediately after the pipeline was damaged, it became necessary for Amoco and Austral to shut down the four gas processing plants until the pipeline could be repaired. During this time, natural gas produced from wells belonging to Amoco and Austral

which would normally have been processed through these four plants was, of necessity, bypassed around them and sold to the natural gas purchaser in an unprocessed state. This resulted in an irretrievable loss by Amoco of valuable liquefiable hydrocarbons or "raw mix" contained in the unprocessed gas amounting to $73,785.61. Austral suffered a similar loss amounting to $13,066.29. It is for the loss of the "raw mix" or liquefiable hydrocarbons that Amoco and Austral seek recovery from Mike Hooks, Inc. and its insurers.

The trial judge held that the Plaintiffs' action was barred on authority of *Robins Dry Dock & Repair Co.* v. *Flint*, 275 U.S. 303, 48 S. Ct. 134 (1927), and granted the Defendants' motion for summary judgment.

V.

Jurisdiction of the District Court was based on diversity of citizenship (28 U.S.C.A. 1332).

VI.

(1) As applied by the Fifth Circuit, the decision of this court in *Robins*, supra, would arbitrarily bar suit by a party against the negligent tort feasor to recover the value of its property lost or damaged in all cases where a contractual relationship exists between the plaintiff and a third party whose property is damaged by reason of the tort feasor's negligence. Such a view is squarely in conflict with the opinion of the Ninth Circuit in the cases of *Carbone* v. *Ursich, The Del Rio*, 209 F. 2d 178 (1953), and *Union Oil Co. v. Oppen*, 501

F. 2d 558 (1974). It is also in conflict with the decision of this court in *Aktieselskabet Cuzco* v. *The Sucarseco et al*, 294 U.S. 394, 55 S. Ct. 467 (1935). In *Cuzco*, this court was called upon to decide whether owners of cargo shipped on a vessel which collided with the defendants' vessel could recover for their general average contribution paid pursuant to a "*Jason Clause*" in the bill of lading. This court held that they could, rejecting the rule of *Robins* and recognizing that their right of action was occasioned by the tort (i.e., the collision) and was not dependent upon the presence of physical damage to their cargo caused by the collision. Damage to the ship on which the petitioner's cargo was being carried, thereby causing the petitioner's general average contribution, was held to be sufficient.

(2) The Defendant, Mike Hooks, Inc., knew of the existence of the pipeline, having in its possession at the time of the accident a map showing its exact location. Therefore, the Defendant could reasonably be expected to foresee that damage to the pipeline would result in losses and damages to persons other than the pipeline owner. The application of the *Robins* decision by the Fifth Circuit in the present case serves no interest save that of the negligent tort feasor. It protects him from the full responsibility of his tortuous conduct, the result of which he could clearly foresee, while penalizing the innocent party whose loss results directly from such conduct. Such a result is inequitable and totally in conflict with the decision of this court in *Cuzco*, supra. The present case requires this court to express itself on the important question of the extent to which the *Robins* decision should be applied.

Respectfully submitted,

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CERTIFICATE

This is to certify that three (3) copies of the above and foregoing petition for a writ of certiorari have been mailed this day, postage prepaid, to Mr. Frank M. Brame, Attorney at Law, 520 Weber Building, Lake Charles, Louisiana 70601, attorney for Mike Hooks, Inc. et al.

New Orleans, Louisiana, this ____ day of May, 1975.

DONALD J. BRANNAN

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 74-1952

AMOCO PRODUCTION COMPANY,
Plaintiff-Appellant,

versus

MIKE HOOKS, INC., et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana

---

(March 7, 1975)

Before: GOLDBERG and RONEY, Circuit Judges, and GROOMS, District Judge.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

Costs are taxed against the plaintiff-appellant.

---

1 See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 430 F.2d 966.
Issued as Mandate:

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 74-1868

ASTRAL OIL COMPANY, INCORPORATED,
Plaintiff-Appellant,

versus

MIKE HOOKS, INC., ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana

---

(March 7, 1975)

Before: GOLDBERG and RONEY, Circuit Judges, and GROOMS, District Judge.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

Costs are taxed against the plaintiff-appellant.

---

1 See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 430 F.2d 966.
Issued as Mandate:

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 74-1952

AMOCO PRODUCTION COMPANY,
Plaintiff-Appellant,

versus

MIKE HOOKS, INC., ET AL,
Defendants-Appellees.

No. 74-1868

AUSTRAL OIL COMPANY, INCORPORATED,
Plaintiff-Appellant,

versus

MIKE HOOKS, INC., ET AL,
Defendants-Appellees.

Appeal from the United States District Court for the
Western District of Louisiana

ON PETITION FOR REHEARING

(April 9, 1975)

Before: GOLDBERG and RONEY, Circuit Judges and GROOMS, District Judge.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered causes be and the same is hereby DENIED.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

CIVIL ACTION NO. 18,870

AMOCO PRODUCTION COMPANY

versus

MIKE HOOKS, INC. and ARGONAUT-SOUTHWEST INSURANCE COMPANY

Third Party Defendants:
CITIES SERVICE OIL COMPANY.

CANADIAN UNIVERSAL INSURANCE COMPANY,
UNIGARD MUTUAL INSURANCE COMPANY OF
SEATTLE, WASHINGTON,
UNDERWRITERS AT LLOYD'S, LONDON

FOR PLAINTIFF
Messrs.
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HUNTER, JUDGE:

MEMORANDUM RULING
ON DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT

The facts are relatively simple and undisputed:

1. Plaintiff, Amoco, owned producing natural gas wells (Article VI of complaint).

2. Amoco owned or had an interest in natural gas processing plants (Article V of complaint).

3. These natural gas processing plants processed natural gas from plaintiff's wells, removing the liquefiable hydrocarbons.

4. Amoco had contracted the liquefiable hydrocarbons to Cities Service, delivery being made to the pipeline at the tailgate of plaintiff's natural gas processing plants (Article VII of complaint).

5. The pipeline was owned by Cities Service Oil.

6. On November 19, 1972, a dredge owned by Mike Hooks, Inc., accidentally struck and ruptured the pipeline.

7. The liquefiable hydrocarbons (raw mix) could not be delivered to Cities Service because of the fracture of Cities Service pipeline.

8. The gas processing plants were forced to shut down until the pipeline was repaired because they could not process gas without having an outlet for the liquefiable hydrocarbons.

9. Because they were unable to process their own gas they had to sell it an unprocessed gas, this resulted in a loss of profit — which is the basis of this suit.

Defendants seek summary judgment. The heart of the motion is that plaintiff's claim is for consequential damages which are not recoverable. We agree, and grant the motion.

The basic law was enunciated by the United States Supreme Court in Robins Dry Dock & Repair Co. v. Flint, 275 U.S. 303 (1927):

> "No authority need be cited to show that, as a general rule, at least, a tort to the person or property of the one man does not make the tort feasor liable to another merely because the injured person was under a contract with that other, unknown to the doer of the wrong."

The *Robins* rule has been consistently followed. Aguilines, Inc. v. Eagle Oil & Shipping Co., 153 F.2d 869 (2nd Cir. 1946); Kaiser Aluminum & Chemical Corp. v. Marshland Dredging Co., 455 F.2d 957 (5th Cir. 1972); Forcum-James Co. v. Duke Transportation Co., 231 La. 953, 93 So.2d 228 (1957). *See also* McDermott v. The SS EGERO, 453 F.2d 1202 (5th Cir. 1972).

Kaiser bears striking resemblance. There, defendant's barge dropped an anchor which punctured a pipeline owned by Sugar Bowl Gas Co. This puncture caused immediate interruption of gas fuel service to Kaiser's production plant. Kaiser sought recovery for shutdown expenses and production losses. The Fifth Circuit affirmed the granting of summary judgment, relying primarily on *Robins:*

> "We agree that recovery by Kaiser is precluded as a matter of law because there is (1) no contention that the interference with Kaiser's contract rights was intentional; (2) no evidence that Marshland had knowledge of the existence of the contract between Kaiser and

Sugar Bowl Gas, and (3) no showing of of facts, by affidavit or otherwise, in opposition to the motion for summary judgment, sufficient to create a genuine issue for trial, of anything more than merely the negligent interference with contract rights."

Motion for summary judgment granted. Counsel for defendant is to submit appropriate judgment.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana on this the 29th day of November, 1973.

/s/ EDWIN HUNTER
UNITED STATES DISTRICT JUDGE

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

CIVIL ACTION NO. 19,068

AUSTRAL OIL COMPANY, INCORPORATED

versus

MIKE HOOKS, INC.

and

ARGONAUT-SOUTHWEST
INSURANCE COMPANY

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HUNTER, JUDGE:

MEMORANDUM RULING ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

This action cannot be distinguished from the companion case of *Amoco* (No. 18870). For written reasons set forth today in No. 18870, we grant summary judgment here.

A copy of our ruling in 18870 is attached and made a part hereof.

Counsel for defendants are to submit appropriate judgment.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, on this the 29th day of November, 1973.

/s/ EDWIN HUNTER
UNITED STATES DISTRICT JUDGE